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September 13, 1995

BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

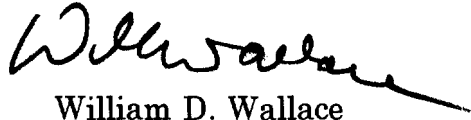
RE: MM Docket No. 94-131 and PP Docket No. 93-253

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Bell Atlantic Corporation are an original and eleven copies of its "Consolidated Comments and Opposition" in the above-referenced dockets.

Should there be any questions regarding this matter, please communicate with this office.

Respectfully submitted,


William D. Wallace

Enclosures

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

REC-100

SEP 11 1995

In the Matter of)

Amendment of Parts 21 and 74 of)

the Commission's Rules with Regard)

to Filing Procedures in the)

Multipoint Distribution Services and)

in the Instructional Television)

Fixed Service)

and)

Implementation of Section 309(j) of)

the Communications Act)

Competitive Bidding)

MM Docket No. 94-131

DOCKET FILE COPY ORIGINAL

PP Docket No. 93-253

To: The Commission

CONSOLIDATED COMMENTS AND OPPOSITION

Pursuant to Section 1.429 of the Commission's Rules, Bell Atlantic Corporation, by its undersigned attorneys, hereby submits its comments on and opposition to certain aspects of the petitions for reconsideration of the rules and policies adopted in the above-referenced dockets on June 30, 1995. See Report and Order, FCC 95-230 (released June 30, 1995) (hereafter BTA Order).¹ Bell Atlantic also filed a petition for partial reconsideration of the BTA Order.

¹ Public Notice of the petitions appeared in the Federal Register on August 29, 1995. See 60 Fed. Reg. 44880 (Aug. 29, 1995).

I. THE COMMISSION SHOULD REJECT REQUESTS TO RESTRICT
THE PROTECTED SERVICE AREA FOR TRANSMITTERS
CONSTRUCTED BY THE BTA AUTHORIZATION HOLDER.

In the BTA Order, the Commission recognized that site-specific licensing of MDS had produced "the very substantial processing and administrative delays that have long plagued the development of the wireless cable service." BTA Order, ¶ 28. Therefore, the Commission adopted Basic Trading Areas (BTAs) as service areas for award of future MDS licenses, finding that a geographic licensing scheme would serve the public interest by providing substantial flexibility to licensees and, in particular, would facilitate the transition to digital transmissions "toward which the wireless cable industry is moving." Id., ¶ 29. To implement the BTA approach, the Commission decided to award future MDS authorization holders a protected service area coterminous with the boundaries of the BTA, subject to providing interference protection to incumbent MDS and ITFS stations. Id., ¶ 39.

The Instructional Telecommunications Foundation (ITF), Network for Instructional TV, Inc. (NITV) and the ITFS Parties have asked the Commission to reconsider these rules and policies. The petitioners claim that by granting BTA-wide protection for the MDS E-, F- and H-Channel Groups, the Commission has limited the potential for construction of new or modification of existing adjacent-channel ITFS stations using the D4 or G1-4 channels within the BTA without the consent of the BTA authorization holder. Moreover, because the Commission has awarded the BTA authorization holder the exclusive right to apply for unused

ITFS frequencies pursuant to Section 74.990 (BTA Order, ¶ 41) and to enjoy a BTA-wide protection for these frequencies as well, the petitioners claim that through effective selection of channels, a BTA authorization holder could also limit construction of future ITFS stations on all ITFS channels in the BTA. The ITFS Parties recommend that the Commission require ITFS applicants only to protect the actual or proposed facilities of the BTA authorization holder. See ITFS Parties' Petition for Reconsideration and Clarification, at 8. This would have the effect of restricting the protected service area for facilities constructed by the BTA authorization holder to a 35-mile protected circle for the actual or proposed transmitter.

This proposed revision to the Commission's Rules should be rejected because it does not serve either to permit construction and modification of ITFS facilities or to promote the competitive use of MDS. First, the proposal does not achieve the professed goal of the ITFS parties to permit construction and modification of ITFS facilities. If the Commission awarded each transmitter constructed by the BTA authorization holder a 35-mile circular protected service area, the BTA authorization holder would only need to blanket the BTA with transmitters on its initial long form to accomplish the freeze-out scenario about which the ITFS petitioners complain.

But, more importantly, the ITFS Parties' proposal undermines the entire BTA licensing scheme because it allows the possibility that service on the E-, F- and H-Channels by the BTA winner would be curtailed as a result of a rash of

filings by ITFS entities on the D- and G-Channels. To allow for this possibility would eliminate many of the benefits for MDS sought by the Commission in the BTA Order. It would also substantially devalue the BTAs from the point of view of the auction itself and the Commission's underlying desire to develop a competitor to the cable television companies.

The Commission should preserve the benefits of geographic licensing for MDS on which the BTA Order is based. In deciding to adopt this new licensing regime for MDS, the Commission has given incumbents fair notice and opportunity to file applications to establish their protected facilities prior to the BTA auction. In order for the Commission to transition to a new licensing scheme for MDS, it must set dates certain for establishing the rights of incumbents. Both MDS and ITFS facilities proposed after the date certain are proposed subject to the new licensing regime. It is not unfair to adopt new rules governing the construction of D4 or G1-4 facilities after adoption of the rules and to require operators of such facilities to protect the "to-be-incumbent" BTA authorization holders.

Moreover, the petitioners' argument is based on a speculative fear that the BTA licensing regime will curtail future ITFS operations. In fact, the Commission has previously recognized that efficient use of ITFS and MMDS facilities depends upon colocation of adjacent-channel stations. See Further Notice of Proposed Rulemaking, 5 FCC Rcd 6472, 6474 (1990). The Commission's new BTA licensing regime places an even higher premium on colocation to ensure efficient use of

spectrum. While the ITFS petitioners may perceive that their ability to establish independent transmitter sites for their facilities has been restricted, as a practical matter, such siting may not result in use of spectrum which promotes both ITFS and MDS. If the ITFS operator intends to lease excess capacity to a MDS service provider, then the parties will probably negotiate colocation of facilities to ensure efficient utilization of the spectrum. The fact that the BTA authorization holder may construct several transmitters may be a benefit to ITFS applicants by providing several possible sites to develop an instructional service.

The proposed rule of the ITFS Parties arises from their one-sided focus on the future rights of ITFS operators, without regard to the efficient use of limited spectrum resources. However, their concerns are mitigated by recognizing that the Commission's new rules for BTA authorizations encourage colocation of ITFS and MDS facilities, which, in turn, promotes efficient use of spectrum. The Commission's new regime for MDS thus has the effect of encouraging further cooperation between MDS licensees and ITFS operators. That is not a new result, nor has it been viewed in the past as precluding ITFS operations. Accordingly, the Commission should reject these petitioners' proposals and retain the protected service areas for BTAs established in the BTA Order.

II. THE COMMISSION SHOULD PERMIT BTA AUTHORIZATION HOLDERS TO CARRY LEASED CHANNELS THROUGHOUT THE BTA.

In its Petition for Partial Reconsideration, Bell Atlantic recommended that the Commission modify its MDS rules to permit a BTA authorization holder which

also leases airtime on an ITFS station to construct transmitters for the ITFS stations which would extend the reach of these channels' signals to the boundaries of the BTA, subject to protection for existing co- and adjacent-channel stations, in conjunction with the authorization holder's MDS channels. Bell Atlantic pointed out that the public interest would be served by allowing maximum use of the BTA authorization holder's full complement of ITFS and MMDS frequencies within the BTA. See Bell Atlantic Petition, at 10-13.

Bell Atlantic's expanded carriage proposal provides a means for the BTA authorization holder to aggregate ITFS channels throughout the BTA. It does not, however, involve many of the problems which have been associated with the Commission's policy of giving BTA authorization holders a right of first refusal on new leases for excess capacity airtime on ITFS channels within the BTA, BTA Order, ¶ 41.²

The Commission has long recognized that the success of wireless cable systems depends in part upon the ability of MDS operators to obtain access to excess capacity on ITFS channels. See, e.g., Instructional Television Fixed Service, 9 FCC Rcd 3360, 3364 (1994). Bell Atlantic's proposed revision to the protected service area rules for leased ITFS capacity provides the BTA

² See, e.g., ITFS Parties' Petition for Reconsideration and Clarification, at 3-6; Pacific Telesis & Cross Country Wireless Petition for Reconsideration and Clarification, at 3-7; National ITFS Association Petition for Reconsideration, at 2-3; Hispanic Information and Telecommunications Network Petition for Reconsideration, at 2-4; Trans Video Communications Petition for Partial Reconsideration and Clarification, at 2-5.

authorization holder with the opportunity to use the full complement of ITFS frequencies which it has aggregated within the BTA. However, the Bell Atlantic proposal avoids the problems identified with the right of first refusal because it does not apply until after the BTA authorization holder has entered into a lease with an ITFS entity.

The expanded carriage proposal also avoids problems which could be inherent in the right of first refusal. For example, in the unserved areas of many BTAs, there may be no ITFS stations from which to lease capacity with or without a right of first refusal. Moreover, to gain access to excess capacity through a new lease would generally require the BTA authorization holder to wait until a new ITFS station application has been granted. Bell Atlantic's proposal would allow existing ITFS stations on which the BTA authorization holder leases airtime to be carried throughout the BTA in conjunction with the build-out of the BTA MDS channels.

Bell Atlantic's proposal for expanded carriage of leased ITFS stations provides the benefits of access to the full complement of ITFS and MMDS channels throughout the BTA. It would serve the public interest to revise the Commission's BTA rules accordingly. Moreover, because the expanded carriage proposal may be used even when there are no ITFS stations from which to lease, the Bell Atlantic proposal should be adopted without regard to action on the right of first refusal.

III. WCAI'S PROPOSAL TO GRANDFATHER "INCUMBENT"
STATIONS WITH SERVICE AREAS BEYOND THE 35-MILE
PROTECTED CIRCLE SHOULD BE REJECTED.

In its Petition for Reconsideration and Clarification, the Wireless Cable Association International, Inc. (WCAI), proposed to modify an aspect of the new BTA rules which could have an adverse effect on the scope and usefulness of BTA authorizations. The Commission has proposed to grandfather a few "incumbent" stations with "directional antennas" which exceed the new -73 dBw/m^2 power flux density limit at 35 miles from the transmitter. BTA Order, ¶ 57. WCAI requests that the Commission grandfather all stations (not limited to facilities with directional antennas) which would exceed the PFD as such stations are currently authorized and all stations which propose to exceed the PFD in applications on file by September 15. WCAI Petition, at 27-28.

This proposal is a serious threat to the value and usefulness of BTAs. If multiple MDS stations apply to exceed the PFD limit by September 15 using omnidirectional antennas, the use of the BTA by the auction winner may be greatly diminished because the signal of these stations would encroach upon the BTA holder's protected service area. Even if these incumbents would not have interference protection beyond 35 miles, the portion of the BTA in which they exceed the PFD may not be usable as a practical matter by the BTA authorization holder. WCAI's proposal could result in an unwarranted "spectrum grab" by numerous MDS stations, which would leave the BTA virtually worthless.

To contain this effect, the Commission should limit those stations which can be grandfathered to exceed the PFD at 35 miles to the circumstances which the Commission identified in the BTA Order, i.e., those stations employing directional antennas authorized or proposed as of the date on which the order was released, June 30, 1995. WCAI's proposal to extend the type of stations grandfathered and the date for applying to exceed the PFD to September 15, 1995, would undermine the scheme establishing the boundaries of protected service areas for incumbents and BTA authorization holders set forth in the Report and Order and potentially devalue the BTAs. To ensure that there is something to bid for at the MDS auction, the Commission should reject WCAI's proposal to increase the class of grandfathered "incumbents" which operate beyond the 35-mile protected circle.

IV. THE COMMISSION SHOULD ADOPT CERTAIN PROPOSALS WHICH WOULD CLARIFY THE VALUE OF BTA AUTHORIZATIONS.

Several proposals in the various petitions for reconsideration of the BTA Order merit adoption because they would help clarify the rights of the BTA winner.

A. Review of New Applications. Pacific Telesis Enterprise Group and Cross Country Wireless (Petition, at 7-8) recommended that the Commission ensure that potential bidders in the MDS auction have an opportunity to review all MDS and ITFS applications filed by September 15 and during the October 1995 ITFS window. This would require that the applications be placed on Public Notice and be made available prior to the start of the auction.

It is likely that a large number of applications will be filed by these dates. Moreover, many of these applications are likely to propose modifications to existing stations which would extend protected service areas of incumbents to the maximum extent possible, thereby reducing the BTA service areas. Because the Commission has adopted a policy of caveat emptor for the auctions, the information in these applications is of critical value for the participants in the BTA auctions. See Public Notice, Report No. AUC-95-06, at 4 (released Sept. 5, 1995). Accordingly, BTA bidders should have access to these applications before the upfront payments are submitted.

B. Length of BTA Authorization. WCAI requested clarification that the BTA authorization holder has the right to build out the BTA for a period of 10 years, assuming that it fulfills its five-year build-out obligation. WCAI Petition, at 11-15. As Section 21.930 is currently written, the rights of the BTA authorization holder appear to terminate after five years, because, after that period, the Commission implies it would accept competing applications for licenses in the BTA. See new 47 C.F.R. § 21.930(b). Bell Atlantic agrees with WCAI that a BTA authorization holder which fulfills its build-out obligation should continue to have the right to expand service in the BTA. Accordingly, Bell Atlantic recommends that the Commission modify Section 21.930(d)(1) to declare that it would not accept competing applications in the BTA for at least another five years after the initial five-year build-out period if the BTA holder meets its obligations.

C. Interference Protection. Bell Atlantic also supports WCAI's recommendation that Section 21.938 regarding protection from harmful interference should take into account the fact that certain incumbent protected service areas fall within BTAs. See WCAI Petition, at 29-30. The incumbent should not have to provide protection to the BTA as long as the incumbent meets the -73 dBw/m² PFD at the boundary of its own protected service area. This minor clarification should be adopted.

V. CONCLUSION

For the reasons set forth above, Bell Atlantic requests that the Commission reject the proposed limitation on BTA protected service areas and the WCAI's proposal to grandfather all incumbents which exceed the PFD limit at 35 miles. The Commission should adopt Bell Atlantic's proposed blanket licensing approach

and expanded carriage for ITFS stations. and revise the rules and policies adopted in the BTA Order as described herein.

Respectfully submitted,

BELL ATLANTIC CORPORATION

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Dated: September 13, 1995

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 13th day of September 1995, caused copies of the foregoing Consolidated Comments and Opposition to be delivered by U.S. mail, postage prepaid, to the following:

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A handwritten signature in black ink, appearing to read "William D. Wallace", written over a horizontal line.

William D. Wallace